

TUCKER ELLIS LLP
David J. Steele - SBN 209797
david.steele@tuckerellis.com
Howard A. Kroll - SBN 100981
howard.kroll@tuckerellis.com
Steven E. Lauridsen - SBN 246364
steven.lauridsen@tuckerellis.com
515 South Flower Street
Forty-Second Floor
Los Angeles, CA 90071
Telephone: 213.430.3400
Facsimile: 213.430.3409

Attorneys for Plaintiffs,
Facebook, Inc. and Instagram, LLC

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

FACEBOOK, INC., a Delaware corporation and
INSTAGRAM, LLC, a Delaware limited liability
company,

Plaintiffs,

v.

9 XIU NETWORK (SHENZHEN) TECHNOLOGY
CO., LTD. a/k/a JIUXIU NETWORK
(SHENZHEN) TECHNOLOGY CO., LTD.;
9 XIU FEISHU SCIENCE AND TECHNOLOGY
COMPANY LTD.;
9 XIUFEI BOOK TECHNOLOGY CO., LTD.;
HOME NETWORK (FUJIAN) TECHNOLOGY
CO., LTD.;
WEI GAO a/k/a GAO WEI;
ZHAOCHUN LIU a/k/a/ LIU ZHAOCHUN; and
ZHAOPING LIU a/k/a LIU ZHAOPING,

Defendants.

Case No. 4:19-cv-1167-JST

**PLAINTIFFS' EIGHTH MOTION TO
CONTINUE THE CASE MANAGEMENT
CONFERENCE [L.R. 6-1(B)]**

CURRENT DATE: January 26, 2021
PROPOSED DATE: April 27, 2021

TIME: 2:00 p.m.
CTRM: Oakland – 6 – 2nd Floor

Hon. Jon S. Tigar

I. NOTICE OF MOTION AND STATEMENT OF RELIEF SOUGHT

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Plaintiffs Facebook, Inc. (“Facebook”) and Instagram, LLC (“Instagram,” and collectively with Facebook, “Plaintiffs”) hereby move this Court for an order continuing the case management conference by approximately three months, from January 26, 2021 to April 27, 2021. The basis for this motion is that each of the Defendants resides in the People’s Republic of China, and while Plaintiffs have initiated the process to serve Defendants through the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters, Nov. 15, 1965, 20 U.S.T. 361, 658 U.N.T.S. 163 (the “Hague Convention”), none of the Defendants have been successfully served to date. Because none of the Defendants have been served with process or appeared in the action, Plaintiffs have not been, and will not be, able to meet and confer with Defendants as required in advance of the case management conference. As a result, the ADR submission and Rule 26(f) report have been submitted unilaterally by Plaintiffs. ECF Nos. 28 & 29.

Additionally, the Court recently granted Plaintiffs leave to serve Defendant 9 Xiu Network (Shenzhen) Technology Co., Ltd. (“9 Xiu”) by email (ECF No. 59), and Plaintiffs effected services on 9 Xiu by email on January 8, 2021 (ECF No. 60). Further, the Clerk of Court has entered the default of Defendants Wei Gao a/k/a Gao Wei and ZhaoChun Liu a/k/a Liu ZhaoChun (ECF Nos. 46 & 47).¹ Judicial economy would thus be best served if the case management conference were continued until at least after Defendant 9 Xiu has had the opportunity to appear.²

Pursuant to Civil Local Rule 6-3(a)(2), Plaintiffs state they have been unable to meet and confer with Defendants in an effort to obtain a stipulation for the relief sought in this motion because none of them has yet appeared in this action. Still, Plaintiffs’ attorneys have attempted to contact Defendants by

¹ Default was entered pursuant to Article 15 of the Hague Convention because the Chinese Central Authority did not return any certificate of service for these Defendants within six months after Plaintiffs initiated service.

² Based on 9 Xiu’s activity to date, Plaintiffs suspect that 9 Xiu will default, at which point Plaintiffs intend to file a motion for default judgment as to all defaulted Defendants. Hearing the motion for default judgment before the case management conference takes place provides another justification to continue the case management conference.

1 email requesting that they stipulate to an extension. Declaration of Steven E. Lauridsen (“Lauridsen
2 Decl.”) ¶ 2.

3 This is the eighth request for the extension of any deadline in this action, with the Court having
4 seven times before continued the case management conference while waiting for service to be effected
5 upon Defendants. ECF Nos. 21-22, 24-27, 30-31, 33-34, 42-43, and 51-52. Plaintiffs believe that the
6 extension will have a minimal impact on the schedule for this case given that no scheduling order has yet
7 been entered. Lauridsen Decl. ¶ 3.

8 **II. CONTINUING THE CASE MANAGEMENT CONFERENCE IS WARRANTED.**

9 **A. Plaintiffs’ pending service efforts on 9 Xiu moot the need for a case management** 10 **conference at this time.**

11 The Court recently granted Plaintiffs leave to serve Defendant 9 Xiu with the summons and
12 complaint by email (ECF No. 59), and Plaintiffs did so on January 8, 2021 (ECF No. 60). Plaintiffs
13 respectfully submit that judicial efficiency will be best served by continuing the case management
14 conference until after 9 Xiu has had an opportunity to appear. Further, given Plaintiffs expect 9 Xiu to
15 default based on 9 Xiu’s actions to date, allowing Plaintiffs the opportunity to move for default judgment
16 prior to the case management conference would conserve judicial resources.

17 **B. The parties and the Court will be best served by complete participation by all parties** 18 **in the case management conference.**

19 Because none of Defendants (except 9 Xiu) have been served to date and none have otherwise
20 appeared, Plaintiffs cannot meet and confer with respect to any of the myriad issues that must be discussed
21 in advance of the case management conference. Indeed, the parties are required to discuss and attempt to
22 stipulate to an ADR option in advance of the case management conference. The parties are also required
23 to conduct their Rule 26(f) conference, during which time they would prepare a discovery plan, discuss
24 means of evidence preservation, determine any anticipated motions, seek to narrow the issues presented
25 in the action, discuss settlement, and develop a proposed schedule for the Court’s review.

26 Being unable to meet and confer with Defendants regarding these issues essentially defeats the
27 purpose of the conference, as the parties will not have an opportunity to limit any potential disagreements
28 and then bring them to the Court’s attention. *See* Fed. R. Civ. P. 26(f) (listing areas for the parties to

attempt to reach an agreement); Fed. R. Civ. P. 1 (explaining that rules should be construed and administered to secure just, speedy, and inexpensive determination of action). Accordingly, judicial economy will be best served by postponing the case management conference until Defendants have appeared or have at least been served.

III. CONCLUSION

The parties are unable to conduct the requisite meetings before the upcoming case management conference, and Plaintiffs therefore respectfully request that the Court continue the conference to April 27, 2021.

DATED: January 14, 2021

Tucker Ellis LLP

By: /s/Steven E. Lauridsen

David J. Steele

Howard A. Kroll

Steven E. Lauridsen

Attorneys for Plaintiffs,
Facebook, Inc. and
Instagram, LLC